IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 582 OF 2006

Ramakant Hrudaynarayan Mishra & Anr. ..Applicants.

Vs.

State of Maharashtra ..Respondent.

Mr. Jayesh Bansilal Kocheta for the Applicants.

Miss M.M. Deshmukh, APP for the Respondent.

CORAM : V.M. KANADE, J.

DATED : 13TH MARCH, 2006.

P.C.:

1. Heard the learned counsel for the Applicants and the learned APP for the State.

2. The Special Judge has rejected the bail application of the applicant on the ground that section 37 of the NDPS Act creates a bar in granting bail to the accused, who was charged for the commission of the offence under the NDPS Act.

3. The learned counsel for the applicant has submitted that the Sessions Court has not taken into consideration the amendment which is made to section 37 of the NDPS Act and to the other provisions such as

sections 20,21, 22 of the NDPS Act. This has in turn laid down that in a cases where the contraband seized from the accused is less than a commercial quantity and more than small quantity, the punishment for such an offence may extend to 10 years with fine. He submitted that in the present case, admittedly, the contraband which was found in possession of the accused was less than 20 kg., which is a commercial quantity prescribed by the Schedule under the Act for the Narcotic Drugs / Ganja. He submitted that, therefore, the bar as provided under section 37, will not apply to the facts of the present case. He submitted that, as such, the Special Judge has erred in declining to grant bail to the applicant on an incorrect interpretation of the amended provisions of sections 20 and 37 of the NDPS Act. In my view, the Sessions Court has clearly erred in holding that the bar of section 37 would apply to the facts of the present case. Admittedly, since the quantity is less than the commercial quantity and more than a small quantity, rigorous of section 37 of NDPS Act will not apply to the facts of the present case and it was the duty of the Special Court to have examined the case of the applicant from that perspective.

4. In the result, the order of the Special Judge, is set aside.

5. The Special Judge is directed to consider the bail application of the applicant afresh on its own merits in accordance with law. The application to be decided as expeditiously as possible and in any case within four weeks from the first date of hearing of the application before the Special Judge.

6. This application is disposed of in the above terms.

13.03.2006 (V.M.Kanade,J)

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